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## The Price is Rights: Getting the United Arab Emirates up to International Speed in the Labor Law Department

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# THE PRICE IS RIGHTS: GETTING THE UNITED ARAB EMIRATES UP TO INTERNATIONAL SPEED IN THE LABOR LAW DEPARTMENT

## INTRODUCTION

Ghulam Muhammad lived in an impoverished village outside of Lahore, Pakistan.<sup>1</sup> He desired a better life for himself and his younger siblings in a land he thought would be the perfect place: Dubai in the United Arab Emirates (UAE).<sup>2</sup> Muhammad worked many odd jobs to provide for his family in Pakistan until he encountered an agent who promised him a job in the UAE.<sup>3</sup> Contrary to his expectation of a well-paying job and economic mobility, however, life in Dubai was a nightmare for Muhammad.<sup>4</sup> Most of his days involved waking up at 4 a.m., and after rising early, he was expected to labor at a construction worksite in the merciless heat without clean drinking water, with little break time for meals and meager wages.<sup>5</sup> Muhammad could only look forward to returning home at 8:00 p.m. to repeat the cycle the following day.<sup>6</sup> He planned to send money back home to his family in Pakistan, but after working for six months, Muhammad did not receive any compensation.<sup>7</sup> When he decided to file a lawsuit in Dubai against his employer, Muhammad's boss dragged the case on for a year, incurring costs that he could not afford.<sup>8</sup> Muhammad could not find any recourse in the legal system and instead was ordered to pay a fine almost two times his monthly salary and to leave the country.<sup>9</sup> Otherwise, he would be sentenced to jail.<sup>10</sup>

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1. Imran A. Mangi, *How CPEC Can Offer Migrant Workers a Better Dream*, DAILY BALUCHISTAN EXPRESS (Sept. 21, 2017), <http://www.bexpress.com.pk/2017/09/httpwp-mep5f0gk-98g/>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

Muhammad's tale represents one of many recurring stories of migrant workers from countries, such as Bangladesh,<sup>11</sup> who migrate to the UAE to provide for their families, only to be faced with harsh working conditions and little to no legal recourse. For instance, R. N. Veeneranna worked as a manual laborer<sup>12</sup> in the UAE and received only one month's salary for six months of work.<sup>13</sup> As a result, he was unable to pay for housing, became desperate, and slept under cars.<sup>14</sup> P. Kumari, who worked in Dubai as a housemaid, lived in a small room with six other women in unsanitary conditions.<sup>15</sup> Similarly, Papa Juttika, also a housemaid, was denied food and water from her employer during prolonged hours of work.<sup>16</sup> These individuals are Indian citizens who migrated to the UAE, but who were tricked by recruitment agencies that charged them large amounts of money for the prospect of finding a high-paying job in a foreign land.<sup>17</sup> Instead, they became a part of a recurring thread amongst many low-wage migrant workers in the United Arab Emirates.<sup>18</sup>

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11. South Asians dominate migration statistics. Migrants from India, Bangladesh, Pakistan, the Philippines and other Asian nations compose 59.48 percent of the total population in the UAE. See *United Arab Emirates Population Statistics (2018)*, *UAE Population by Nationality*, GLOBAL MEDIA INSIGHT (Jan. 11, 2018), <https://www.globalmediainsight.com/blog/uae-population-statistics/>. As of 2018, Indian nationals comprise 27.49 percent of the total population (2.62 million) and is the highest demographic group in the UAE overall, followed by Pakistan (1.21 million), Bangladesh (0.71 million), Philippines (0.53 million), Nepal (0.30 million), Sri Lanka (0.30 million), and China (0.30 million). *Id.*

12. Manual labor in the UAE consists mainly of construction, maintenance and sanitation. U.S. DEP'T COM., INT'L TRADE ADMIN., UNITED ARAB EMIRATES COUNTRY COMMERCIAL GUIDE, 9.2 — LABOR POLICIES AND PRACTICES (Apr. 23, 2018), <https://www.export.gov/article2?id=United-Arab-Emirates-labor>. Additionally, many domestic workers increasingly from South Asia, Southeast Asia and Africa migrate for work in the homes of Emirati and expatriate families. *Id.* Federal law often does not apply to "domestic, agricultural, and public sector workers." *Id.*

13. *Indian Migrant Workers Return Home with Horror Tales from UAE*, TIMES INDIA (Feb. 13, 2013), <https://timesofindia.indiatimes.com/nri/middle-east-news/Indian-migrant-workers-return-home-with-horror-tales-from-UAE/articleshow/18473461.cms>.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

Dubai, one of the seven emirates of the UAE,<sup>19</sup> is one of the most popular touristic destinations in the world.<sup>20</sup> Dubai's spectators often marvel at its large skyscrapers, its man-made islands, and its visibly apparent wealth.<sup>21</sup> Dubai is the business epicenter of the UAE,<sup>22</sup> located on the coast of the Persian Gulf bordering Saudi Arabia and Oman.<sup>23</sup> A majority of the people who reside in Dubai and the other emirates, however, are not natives to the land.<sup>24</sup> The UAE's migrants compose 88 percent of

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19. An emirate is a state or territory. The seven emirates of the United Arab Emirates are: Abu Dhabi, Dubai, Sharjah, Ajman, Ras al Khaimah, Fujairah and Um Al Quwain. See *Biggest Cities in the United Arab Emirates (UAE)*, WORLD ATLAS <https://www.worldatlas.com/articles/the-biggest-cities-in-the-united-arab-emirates-uae.html> (last updated Apr. 25, 2017). Dubai is the capital and the largest populated city of the emirate in Dubai. *Id.* Abu Dhabi serves as the capital of the country, but is also the second largest population in the emirate of Abu Dhabi. *Id.*

20. In the 1980s and 1990s, Dubai strategically began developing its tourism industry. See *Dubai History*, GOV'T DUBAI, <http://www.dubai.ae/en/aboutdubai/Pages/DubaiHistory.aspx> (last visited Dec. 3, 2018); *Dubai's Popularity as Mice Destination Grows*, KHALEEJ TIMES (Apr. 16, 2017), <https://www.khaleejtimes.com/business/economy/dubais-popularity-as-mice-destination-grows>. The government invested in unique architecture, innovative hotels and high-end entertainment to attract tourists from around the world. *Id.* Developments, such as the Burj Al Arab hotel, the world's only hotel with a seven-star rating. *Id.* In addition, Dubai hosts important international sporting events, such as the Dubai Desert Classic, the Dubai Open, ATP tennis tournaments, and the Dubai World Cup. *Id.*

There are seven separate territories that comprise the United Arab Emirates. Each territory is referred to as an 'emirate,' and they include: Dubai, Abu Dhabi, Sharjah, Ajman, Ras Al Khaimah, and Umm Al Quwain.

*The Seven Emirates*, OFFICIAL PORTAL U.A.E. GOV'T, <https://government.ae/en/about-the-uae/the-seven-emirates> (last visited Oct. 7, 2018); Jill Ann Crystal & J.E. Peterson, *United Arab Emirates*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/United-Arab-Emirates> (last updated Oct. 7, 2018).

21. Mary Freeman, *USA Today Travel Tips*, USA TODAY, <https://traveltips.usatoday.com/dubai-tourists-12296.html>.

22. *Countries/Jurisdictions of Primary Concern — United Arab Emirates*, U.S. DEPT ST., <https://www.state.gov/j/inl/rls/nrcrpt/2014/vol2/222842.htm> (last visited Oct. 7, 2018).

23. *Dubai*, NEW WORLD ENCYCLOPEDIA, <http://www.newworldencyclopedia.org/entry/Dubai> (last visited Oct. 7, 2018).

24. *Emiratisation*, OFFICIAL PORTAL U.A.E. GOV'T, <https://government.ae/en/information-and-services/jobs/vision-2021-and-emiratisation/emiratisation-> (last updated Sept. 25, 2018).

the total population.<sup>25</sup> Of the countries with the highest migrant populations, the UAE ranks second, just under Vatican City.<sup>26</sup> In fact, four of the ten countries having the highest migrant populations are Gulf states.<sup>27</sup> The UAE has the largest percentage of a country's population comprised of international migrants in the world.<sup>28</sup> Due to its rapidly growing economy over the last four decades—a consequence of the discovery of major oil reserves<sup>29</sup>—and the shortage of Emirati citizens available to fill positions for newly created employment,<sup>30</sup> Dubai has witnessed a large need for migrant labor.<sup>31</sup> With an 84 percent migrant workforce, there

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25. See *The World Factbook: United Arab Emirates*, C.I.A. (Sept. 26, 2018), <https://www.cia.gov/library/publications/the-world-factbook/geos/ae.html>.

26. As of 2016, Vatican City is ranked highest with an immigrant population of 100 percent, followed by the United Arab Emirates, which has 88 percent of immigrant populations. *Top Ten Countries with the Largest Immigrant Population*, MOVERDB.COM (May 22, 2016), <https://moverdb.com/largest-immigrant-populations/>.

27. The Gulf States represent a political and economic coalition between Saudi Arabia, Kuwait, Bahrain, Qatar, the United Arab Emirates and Oman. Considered as a unified group of states in 1981 by the Gulf Cooperation Council (GCC), the Gulf States have not experienced as much political strife as other surrounding states. *Gulf Cooperation Council*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Gulf-Cooperation-Council> (last updated Jan. 23, 2019). The Gulf state and GCC states are interchangeable and are governed by the GCC's charter. *Id.* Article 4 states that the purpose of the alliance is "to strengthen relations among its member countries and to promote cooperation among the countries' citizens." *Id.* Included in the structure of the GCC are the Defense Planning Council, Supreme Council, Ministerial Council, and the office of the Secretariat-General. *Id.* Part of the GCC long-term plan was to create a unified currency similar to the euro in the European Union, but that new currency has yet to come to fruition. Simon Henderson, *Understanding the Gulf States*, WASH. INSTITUTE (Spring 2014), <http://www.washingtoninstitute.org/policy-analysis/view/understanding-the-gulf-states>;

28. See Rukmini S., *2.8 Million Workers and \$13 bn: The Story of Indian Migrants to the UAE*, HINDU (Sept. 23, 2017), <http://www.the-hindu.com/data/28-million-workers-and-13-billion-the-story-of-indian-migrants-to-the-uae/article10319880.ece>.

29. See generally Froilan T. Malit Jr. & Ali Al Youha, *Labor Migration in the United States: Challenges and Responses*, MIGRATION POLY INSTITUTE (Sept. 18, 2013), <http://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses>.

30. *Id.*

31. *Id.*

are twice as many Indian-born individuals as there are Emirati natives.<sup>32</sup>

Dubai's economy is largely run by expatriates,<sup>33</sup> and its workforce is divided between three distinct sectors: (1) Emirati citizen-held jobs that are often within government; (2) high-level Westerner jobs; and (3) low-wage labor frequently reserved for South Asian migrants. Emirati citizens compose the most protected group, having government and private sector jobs reserved for them in a national quota system known as 'Emiratisation.'<sup>34</sup> The UAE, in a clear push to protect its citizens, has also created several pilot programs that allow Emirati citizens to shadow skilled migrant workers with the intention of replacing them.<sup>35</sup> Tension exists between Emirati nationals, who are often portrayed by migrants as privileged and lazy, and the migrant workers, who have long been looked upon as disposable labor.<sup>36</sup> The migrant workers lack the opportunities awaiting many wealthy Western expatriates and Emirati citizens, as evidenced by the limited amount of resources and support they receive.<sup>37</sup> Emirati citizens are protected by a myriad of government

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32. The term Emirati is an indication of "a citizen or inhabitant of the United Arab Emirates." *Emirati*, OXFORD DICTIONARIES, <https://en.oxforddictionaries.com/definition/emirati> (last visited Oct. 7, 2018). *Malit & Al Youha*, *supra* note 29.

33. An expatriate is a person who leaves their native country with the intention of living and working in another country. Expatriates still have citizenship in their native country, and can have plans to stay in the host country for a period of time. Some expatriates chose to never return to their home country as well. *Expatriate*, BUS. DICTIONARY, <http://www.businessdictionary.com/definition/expatriate.html> (last visited Oct. 7, 2018) [hereinafter *Expatriate* BD]. See also *Expatriate*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/expatriate> (last visited Oct. 7, 2018).

34. 'Emiratisation' is a UAE government process that allows for Emirati citizens to be favorably considered for many public and private sector jobs. The process was sought by the government as a response to the rapid influx of expatriate workers to the UAE, and to protect job availability for native Emirati residents. *Vision 2021 and Emiratisation*, OFFICIAL PORTAL U.A.E. GOV'T, <https://government.ae/en/information-and-services/jobs/vision-2021-and-emiratisation/emiratisation-> (last updated Sept. 25, 2018).

35. Diedre McPhillips, *UAE No Paradise for Migrant Workers*, U.S. NEWS (July 10, 2017), <https://www.usnews.com/news/best-countries/articles/2017-07-10/uae-is-no-paradise-for-migrant-workers>.

36. *Id.*

37. Approximately 88–90 percent of the population of the UAE are migrant workers. Citizenship opportunities for migrant workers to become Emirati nationals is impossible, as only descendants who lived in the region before 1925

welfare programs, and 90 percent of government sector jobs are reserved for Emirati nationals.<sup>38</sup> Western expatriates do not integrate into Emirati society as a consequence of the benefits that only serve Emirati nationals, in addition to cultural barriers.<sup>39</sup> Social welfare programs that exist for UAE nationals are not available to migrant workers.<sup>40</sup>

Low-wage workers often face a fundamentally different experience than that endured by many Western expatriates in the UAE who come from countries, such as the United States, Australia, and the United Kingdom.<sup>41</sup> Many low-wage workers come from Southeast Asian countries, such as Bangladesh, India, and the Philippines to work in the construction sector.<sup>42</sup> The top five migrant countries to the UAE are India, Bangladesh, Pakistan, Egypt, and the Philippines.<sup>43</sup> These migrant workers send billions of dollars outside of the UAE to their families, who remain

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are eligible for citizenship. There is no system of citizenship or permanent residency for most UAE residents. See Riaz Hassan, *The UAE's Unsustainable Nation Building*, YaleGlobal Online, <https://yaleglobal.yale.edu/content/uaes-unsustainable-nation-building>. Average wage ranges in Dubai are the lowest for laborers (jobs overwhelmingly taken by migrant workers), are the lowest, at 600-1,500 dirhams (approximately \$163- \$408) per month. See Dubai Salary and Pay Scale, Dubai Expat Life, (Aug. 15, 2017), <https://www.guide2dubai.com/living/expat-life/dubai-salary-and-pay-scale>.

38. Emirati citizens enjoy a tax-free income, free healthcare, subsidized gas, subsidies to purchase land for homes with interest-free loans and free higher education. See Aya Batrawy, *A Lifetime of Perks in UAE Help Cushion Wealth Gap*, ASSOCIATED PRESS (Nov. 4, 2014), <https://ap-news.com/35bce52cdc8d4a85a44ad104f44e954c>. Men are given 70,000 dirhams (19,000 US dollars) to assist with marriage costs if they marry an Emirati woman. *Id.* The UAE government has also assisted Emirati citizens with entrepreneurship incentives with low to no interest on business loans and help to bail citizens out who are saddled in debt through the Debt Settlement Fund. See also Neil Halligan, *UAE Debt Settlement Fund Waives Defaults Worth Over \$408m*, ARABIAN BUSINESS (Nov. 7, 2014), <https://www.arabianbusiness.com/uae-debt-settlement-fund-waives-defaults-worth-over-408m-573278.html>.

39. Shane McGinley, *UAE Expats Don't Integrate with Emiratis — Poll*, ARABIAN BUSINESS (May 30, 2012), <https://www.arabianbusiness.com/uae-expats-don-t-integrate-with-emiratis-poll-459833.html>.

40. *Social Welfare Programmes*, OFFICIAL PORTAL U.A.E. GOV'T, <https://government.ae/en/information-and-services/social-affairs/social-welfare-programmes> (last updated Sept. 19, 2018).

41. *Id.*

42. UNICEF, UNITED ARAB EMIRATES: MIGRATION PROFILES (2013), available at <https://esa.un.org/migmgprofiles/indicators/files/UAE.pdf>.

43. See generally Rukmini, *supra* note 28.

in their resident countries.<sup>44</sup> The migrant workers fill a significant amount of jobs as housekeepers, restaurant workers, and low-level laborers in other customer service-related industries.<sup>45</sup>

The Western expatriates,<sup>46</sup> many of whom are college-educated and fluent in English, are able to secure positions as teachers, business professionals, and administrative employees at large companies.<sup>47</sup> These jobs provide security and benefits, such as health care, sick leave, and higher wages.<sup>48</sup> In order for the UAE labor sector to flourish, companies look to fill these jobs with expatriate labor.<sup>49</sup> The demand, however, for low-wage labor attracts many migrants who are often enticed by the allure of the UAE and the prospects of earning a living. Nonetheless, many of the migrants are subsequently left with sub-par conditions, a loss of autonomy and a lack of job security.<sup>50</sup> On average, a migrant worker makes only \$175 USD per month, compared to Emirati nationals who earn 20,557.50 AED, or approximately \$5,597.69 USD, per month.<sup>51</sup> Low-wage laborers, commonly referred to as migrant workers, are therefore systematically ostracized from the upward mobility afforded to the ruling Emirati

44. *Id.*

45. See generally Malit & Youha, *supra* note 29.

46. An expatriate is considered "a person who has citizenship in at least one country, but who is living in another country. Most expatriates only stay in the foreign country for a certain period of time, and plan to return to their home country eventually, although there are some who never return to their country of citizenship." *Expatriate BD*, *supra* note 33.

47. Sarah Townsend, *Great Escape? The UAE's Expat Dilemma*, ARABIAN BUSINESS (Aug. 12, 2016), <https://www.arabianbusiness.com/great-escape—uae-expat-s-dilemma-642102.html>.

48. Dubai Salary and Pay Scale, Dubai Expat Life, (Aug. 15, 2017), [https://www.guide2dubai.com/living/expat-life/dubai-salary-and-pay-scale.](https://www.guide2dubai.com/living/expat-life/dubai-salary-and-pay-scale;); See also Employment Packages in Abu Dhabi, Expat Arrivals, (Last Updated Aug. 14, 2018), <http://www.expatarrrivals.com/article/employment-packages-abu-dhabi>.

49. Ola Salem, *Ministry of Labour Tells FNC that Expatriate Workers Must Be Protected*, NAT'L (Jan. 20, 2014), <https://www.thenational.ae/uae/government/ministry-of-labour-tells-fnc-that-expatriate-workers-must-be-protected-1.339796>.

50. Heather E. Murray, *Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries*, 45 CORNELL INT'L L.J. 461 (2012).

51. Sarah Hamza, *Migrant Labor in the Arabian Gulf: A Case Study of Dubai, UAE*, 6 PURSUIT — J. UNDERGRADUATE RES. AT U. OF TENN. 81 (2015), <https://trace.tennessee.edu/cgi/viewcontent.cgi?article=1244&context=pursuit>.



elite and the more educated expatriate population.<sup>52</sup> The UAE is one of six countries in the GCC<sup>53</sup> characterized by a great imbalance between migrant workers and UAE nationals.<sup>54</sup>

Although the need for low-wage labor is not a new phenomenon, the UAE's problematic approach and cultural practices have often clashed with international practices.<sup>55</sup> Human rights groups, such as the International Campaign for Freedom in the United Arab Emirates (ICF UAE), call on the international community to step in, proclaiming that the UAE is "the hub of modern slavery and labor abuse," and that the country "has grimly failed in respecting human rights."<sup>56</sup> The ICF UAE campaigns in

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52. *Emiratisation Integral to UAE's Vision*, GULF NEWS (Feb. 9, 2018), <https://gulfnews.com/opinion/editorials/emiratisation-integral-to-uae-s-vision-1.2170925>.

53. The GCC countries consist of the United Arab Emirates, Kuwait, Saudi Arabia, Oman, Qatar and Bahrain. The GCC was formed as a political and economic alliance in order to advance common objectives. *See Gulf Cooperation Council*, *supra* note 27.

54. The UAE is included in the top twenty nations in the world that have the highest proportion of migrants compared to the number of national citizens. Sarah Hamza, *supra* note 51. The rapid growth of the UAE changed the landscape of the country. *Id.* It is estimated that only 4 percent of the total workforce in the country will be UAE nationals. *Id.* To combat this, the UAE implemented Emiratisation programs to promote quotas for UAE nationals in both public and private sectors. *Id.* Government jobs are reserved for UAE nationals and are some of the best paid jobs in the country. *Id.* In addition to earning a significantly low fraction of what UAE nationals earn, many migrants experience delayed or withheld wages and are not allowed to strike or unionize without risk of deportation. *Id.*

55. The International Convention on All Forms of Racial Discrimination states: "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for work, to just and favourable remuneration." International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

56. *Group Launches Campaign to Boycott UAE Over 'Grim' Human Rights Record*, FARS NEW AGENCY (Oct. 8, 2017), <http://en.farsnews.com/newstext.aspx?nn=13960716001582>.

support of political activism and democratic reform in the country.<sup>57</sup>

The need for expatriate labor has come with huge consequences, particularly for low-wage migrant workers. Recent widespread concern over human rights violations within the UAE and its lack of proper safeguarding for migrant workers have left many laborers without proper legal recourse.<sup>58</sup> For example, many of the employment contracts signed by migrant workers contain mandatory arbitration clauses, which is no different from the current push in the West to use arbitration clauses in both domestic and international contracts.<sup>59</sup> This severely limits the ability of the workers to seek judicial redress for violations of their employment agreement. The lack of adequate labor law provisions or enforcement in the UAE ultimately puts global investors at risk of losing their investment and reputation because it discourages normative international legal compliance with fundamental labor laws. It also adversely affects the lives of the many men and women who are in search of better job prospects. International human rights organizations, such as Human Rights Watch, Amnesty International and United Nations Office of the High Commissioner have said that workers have the right to tolerable work conditions and to freedom from abuse by an employer.<sup>60</sup> Moreover, migrant workers in

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57. *International Campaign for Freedom in the United Arab Emirates (ICF UAE)*, HUM. RTS. CONNECTED, <https://humanrightsconnected.org/organizations/international-campaign-for-freedom-in-the-united-arab-emirates> (last visited Dec. 3, 2018).

58. See generally Bahir Ahmed, Chatura Randeniya, et al., *Litigation and Enforcement in the United Arab Emirates: Overview*, THOMSON REUTERS (July 1, 2017), [https://uk.practicallaw.thomsonreuters.com/4-501-9686?transition-Type=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/4-501-9686?transition-Type=Default&contextData=(sc.Default)&firstPage=true&bhcp=1).

59. The UAE has also moved toward more workplace arbitration, following the shift of Western countries like the E.U and United States. See Ian Clarke, et. al., *Global Arbitration Review: United Arab Emirates*, The European, Middle Eastern and African Arbitration Review, (Oct. 15, 2015), <https://globalarbitrationreview.com/insight/the-european-middle-eastern-and-african-arbitration-review-2016/1036963/united-arab-emirates>.

60. The exact language of Article 23 reads:

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

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(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). Article 7 of the International Covenant on Economic, Social and Cultural Rights is as follows:

...equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work, a decent living for themselves and their families in accordance with the provisions of the present Covenant, safe and healthy working conditions.

International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

*See also* Cairo Declaration of Human Rights, Article 13:

Work is a right guaranteed by the State and the Society for each person with capability to work. Everyone shall be free to choose the work that suits him best and which serves his interests as well as those of the society. The employee shall have the right to enjoy safety and security as well as all other social guarantees. He may not be assigned work beyond his capacity nor shall he be subjected to compulsion or exploited or harmed in any way. He shall be entitled - without any discrimination between males and females - to fair wages for his work without delay, as well as to the holidays allowances and promotions which he deserves. On his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

ORG. ISLAMIC COOPERATION [OIC], Cairo Declaration of Human Rights in Islam (Aug. 5, 1990), <http://www.fmreview.org/Human-Rights/cairo.html> [hereinafter Cairo Declaration of Human Rights]; *see also* International Convention on the Elimination of All Forms of Discrimination, *supra* note 55; *see also* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2237 U.N.T.S. 319, *available at*

the UAE are unable to strike without fear of losing their jobs and work visas due to its outdated *kafala*<sup>61</sup> system of granting visas and tracking migrant workers.<sup>62</sup>

Although the UAE has recently enacted antidiscrimination laws,<sup>63</sup> employers can advertise for specific ethnic communities exclusively over others,<sup>64</sup> creating an ethnic caste system whereby many Southeast Asian natives are kept from better paying jobs with benefits.<sup>65</sup> African women who are largely domestic workers, such as nannies and housekeepers, are inadvertently affected by this ethnic caste system as well.<sup>66</sup>

This de facto combination of lackadaisical labor laws has ultimately perpetuated a system of economic inequality, stagnation, and racism toward migrant workers.<sup>67</sup> The UAE is not open to providing a path to citizenship for its migrant population—a feat that would allow migrants to be paid on par with Emirati

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[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-12-a&chapter=18&lang=en).

61. The *kafala* system began as a practice in the 1950s to regulate the employer-employee relationships in mainly West Asian countries. See *Employer-Migrant Worker Relationships in the Middle East: Exploring Scope for Internal Labour Market Mobility and Fair Migration*, INT'L LAB. ORG., [http://www.ilo.org/beirut/publications/WCMS\\_552697/lang-en/index.htm](http://www.ilo.org/beirut/publications/WCMS_552697/lang-en/index.htm) (last visited Oct. 7, 2018). It is currently used in the GCC countries, as well as Jordan and Lebanon. *Id.* The system serves as a mechanism for tracking and permitting entry into Gulf countries, such as the UAE, with the goal of regulating migrant labor. *Id.* This system only permits an employer to sponsor and grant entry into the United Arab Emirates. *Id.* Under this system, the employee must work for the employer for the designated amount of time or risk losing his or her visa and being expelled from the country. *Id.* The migrant worker also is not allowed to leave the country or resign from the job post without written consent from the employer. See *Employer-Migrant Worker Relationships in the Middle East: Exploring Scope for Internal Labour Market Mobility and Fair Migration*, INT'L LAB. ORG., [http://www.ilo.org/beirut/publications/WCMS\\_552697/lang-en/index.htm](http://www.ilo.org/beirut/publications/WCMS_552697/lang-en/index.htm) (last visited Oct. 7, 2018).

62. *Id.*

63. On Combatting Discrimination and Hatred, Federal Decree No 2. of 2015, July 15, 2015, translated in U.A.E. MINISTRY JUST., available at [http://ejustice.gov.ae/downloads/latest\\_laws2015/FDL\\_2\\_2015\\_discrimination\\_hate\\_en.pdf](http://ejustice.gov.ae/downloads/latest_laws2015/FDL_2_2015_discrimination_hate_en.pdf).

64. Martin Croucher, *Job Advert Discrimination Not Illegal in the UAE*, NAT'L (Jan. 5, 2013), <https://www.thenational.ae/uae/job-advert-discrimination-not-illegal-in-uae-1.333701>.

65. *Id.*

66. Heather E. Murray, *supra* note 50.

67. *Id.*

nationals.<sup>68</sup> Instead, archaic laws perpetuate the passing down of Emirati citizenship solely through the father, thereby encouraging nationals to marry one another.<sup>69</sup> The wealth largely accrued from the discovery of oil<sup>70</sup> and its booming tourism has been methodically passed down to the Emirati nationals, with generous welfare programs that include “tax-free income, free high-quality healthcare, subsidized fuel, generous government-funded retirement plans, access to land to build homes with interest free loans, and free higher education.”<sup>71</sup>

Despite the UAE’s own labor law and administrative regulatory system,<sup>72</sup> the country continues to lack any desire or motive to properly enforce it. This lack of enforcement is especially enticing to large companies and businesses that are attracted to the country for its generous business practices.<sup>73</sup> The UAE has seen immense growth that is expected to continue.<sup>74</sup>

Part I of this Note will examine how the UAE has developed into a hub of architectural innovation and wealth. Part II will discuss how this rapidly-growing country’s import of foreign labor has significant impact on international labor law practices. Part III will look at how these laws, or their lack thereof, have caused human rights violations pursuant to the Universal

68. See *generally Labour Law*, U.A.E. MINISTRY HUM. RESOURCES EMIRATISATION, <http://www.mohre.gov.ae/en/labour-law/labour-law.aspx> (last visited Oct. 7, 2018).

69. McPhillips, *supra* note 35.

70. During what scholars categorize as the “third wave” in the 1970s, the discovery of oil in the United Arab Emirates led to the proliferation of massive wealth. The country began to prioritize economic welfare programs for Emirati national citizens. After the oil boom, the UAE discontinued its naturalization program for Arab migrants. See Hamza, *supra* note 51.

71. *Despite Wealth Gap, Ordinary Emiratis Ride UAE Gravy Train*, TIMES ISR. (Nov. 4, 2014), <https://www.timesofisrael.com/despite-wealth-gap-ordinary-emiratis-ride-uae-gravy-train/>.

72. Public sector employees are governed by the Federal Decree Law No. 11 under the leadership of the Federal Authority for Government Human Resources. Public employees are governed by Federal Law No. 8 of 1980 (hereafter “labor law”) under the Ministry of Human Resources and Emiratisation. *Employment Laws and Regulations*, OFFICIAL PORTAL U.A.E. GOV’T, <https://www.government.ae/en/information-and-services/jobs/employment-laws-and-regulations> (last updated Nov. 27, 2018).

73. *Id.*

74. U.N. DEV. PROGRAM, HUMAN DEVELOPMENT FOR EVERYONE: BRIEFING NOTE FOR COUNTRIES ON THE 2016 HUMAN DEVELOPMENT REPORT (2016), *available at* [hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/es/ARE.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/es/ARE.pdf).

Declaration of Human Rights.<sup>75</sup> Part IV will address how other Gulf states are structuring their legal apparatuses to address the growing concerns with migrant workers' rights. Finally, Part V will look deeply at solutions and suggestions, providing an exhaustive list of what could be done to enforce provisions that protect migrant workers. This Note will also discuss the benefits of switching to a more internationally recognized model of labor law with the goal of helping to retain laborers, receiving a larger return on investment with long-term workers who are empowered in seeing projects through to completion, and encouraging more business within the region by easing the worries of the business conglomerates.

#### I. DUBAI'S UNPRECEDENTED RISE TO WEALTH: AN HISTORICAL APPROACH

By the early nineteenth century, the United Kingdom had minimal, but evident<sup>76</sup> rule over the region that is now the UAE.<sup>77</sup> One well-regarded historian noted:

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75. Universal Declaration of Human Rights, *supra* note 60; Cairo Declaration of Human Rights, *supra* note 60; *see also* International Convention on the Elimination of All Forms of Discrimination, *supra* note 55; *see also* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, *supra* note 60; G.A. Res. 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (Dec.18 1990), *available at* <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>.

76. Britain became involved in the UAE in order to preserve its interest in the British East India Company and The India Office, which dissolved after Indian independence in 1947 *See* MUNA M. ALHAMMADI, *BRITAIN AND THE ADMINISTRATION OF THE TRUCIAL STATES 1947–1965* (2014). After 1947, Britain began shifting political power to the native Sheikhs. *Id.* During this time, the local tribes thrived and preserved their own social, political and cultural societies. These tribes were active in pearling, shipbuilding, maritime transport, trade with India and East Africa, fishing, farming and handicrafts *Id.* The most important of these tribes within the region were: Bani Yas, Manasir and Al Awamir in Abu Dhabi; Al Bu Falasah Sudan and Al Marr in Dubai; Al Qawasim, Mazouris, Al Bu Na'im, Bani Katab, Al Ali, Naqabi, Shawami, and Tinaji in Sharjah; Al Qawasim, Sudan, Al Ali, Al Marr, Mazroui, Al Bu Na'im, Al Za'ab, Shohool, Al Haboos in Ras Al-Khaimah; Al Bu Na'im, Sudan and Al Bu Mihair in Ajman; Al Ali in Umm Al-Quwain; and Sharqi in Fujairah. *See* MUNA M. ALHAMMADI, *BRITAIN AND THE ADMINISTRATION OF THE TRUCIAL STATES 1947–1965* (2014).

77. *See United Arab Emirates: History*, *ENCYCLOPEDIA BRITANNICA*, <https://www.britannica.com/place/United-Arab-Emirates/History#ref484756> (last visited Oct. 7, 2018).

Britain did not attempt to change the traditional systems of rule in the emirates or intervene in the relations between the rulers and their people, recognizing that maintaining influence in the region depended on respecting tribal arrangements. British officials therefore established an administrative system that allowed them to maintain constant contact with the rulers and successfully monitor domestic developments.<sup>78</sup>

Governmental power, however, was put into the hands of a few dominant tribes,<sup>79</sup> so the British were only minimally involved in the country's administrative affairs, with the intention of providing protection for both countries.<sup>80</sup> Following a series of agreements,<sup>81</sup> the remaining tribes, along with the ruling Bani Yas tribe, came together to form the UAE.<sup>82</sup> After its independence, the sultanate leaders of Bahrain and Qatar<sup>83</sup> worked with UAE leaders to form a centralized government comprised of seven emirates, with Dubai and Abu Dhabi being the largest and most populated.<sup>84</sup> After the termination of treaty relationships with the seven Trucial Coast states on December 2, 1971, the

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78. ALHAMMADI, *supra* at note 76.

79. The Al Quwasim tribe was initially the dominant reigning tribe; however, after Britain arrived, the Banu Yas tribal confederation in Abu Dhabi gained power. *United Arab Emirates: History*, *supra* note 77.

80. After the British took control, the Banu Yas Tribe signed subsequent agreements to remain peaceful and continued to maintain autonomy through sheikdoms over administrative concerns. *United Arab Emirates: History*, *supra* note 77.

81. Prior to UAE independence in 1971, Britain encouraged the rulers of the seven sheikdoms to adopt common practices in administration matters in order to encourage a federation. Upon Britain's proclamation to end its Trucial Coast treaty, the sheikdoms convened to create a federal constitution as the United Arab Emirates. See *Country Profile: United Arab Emirates (UAE)*, LIBR. CONGRESS (July 2007), <https://www.loc.gov/rr/frd/cs/profiles/UAE.pdf>.

82. ALHAMMADI, *supra* at note 76.

83. Both Qatar and Bahrain, similar to the UAE, were largely ruled by tribes. ALHAMMADI, *supra* at note 76. In 1968, Qatar and Bahrain were in the process of transitioning from being under British rule to independence. *Id.* Qatar was in talks with the UAE to form a federation. *Id.* The unification never happened, and Bahrain, Qatar and the UAE subsequently became separate independent countries. *Qatar Profile — Timeline*, BBC NEWS (Dec. 3, 2018), <https://www.bbc.com/news/world-middle-east-14702609>; Aarti Nagraj, *Dubai's DIFC Courts Will Now be Able to Handle Labour Cases*, GULF BUS. (Mar. 1, 2017), <http://gulfbusiness.com/dubais-difc-courts-will-now-able-handle-labour-cases/>.

84. *Qatar Profile — Timeline*, *supra* note 83.

UAE established a working constitution outlining how the country would function.<sup>85</sup>

The UAE's political structure follows that of many Gulf states, and is a constitutional monarchy in which the seven emirates are ruled by a series of families.<sup>86</sup> The majority of UAE nationals are descendants from two tribal groups, the Qawasim and the Bani Yas.<sup>87</sup> The ruler of Abu Dhabi is considered the president of the UAE.<sup>88</sup> The late Sheikh Zayed bin Sultan Al Nahyan is the most revered former president of the UAE, having spearheaded much of the country's development projects, and having served an instrumental role securing the country's independence from Great Britain.<sup>89</sup> Sheikh Zayed helped to organize the Supreme Council of Rulers, an establishment comprised of the highest government authority figures,<sup>90</sup> after the country gained its independence.<sup>91</sup> Following the death of Sheikh Zayed on November 2, 2004, his son, Sheikh Khalifa bin Zayed Al Nahyan, became the current president of the UAE.<sup>92</sup>

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85. See generally, *The Constitution of the UAE*, OFFICIAL PORTAL U.A.E. GOV'T, <https://government.ae/en/about-the-uae/the-constitution-of-the-uae> (last visited Oct. 7, 2018).

86. *The UAE Leaders*, MIDEAST CAPITAL, <https://www.mideast-capital.com/the-uae-leaders> (last visited Dec. 3, 2018).

These ruling families have lineage dating back to the ruling tribes of the seven emirates. The Emirates are ruled by: (1) the Al Nahyan family (ruled by Sheikh Khalifa bin Zayed bin Sultan Al Nahyan of Abu Dhabi); (2) the Al Nuaimi family (ruled by Sheikh Humaid bin Rashid Al Nuaimi of Ajman); (3) the Al Maktoum family (ruled by Sheikh Mohammed bin Rashid Al Maktoum of Dubai); (4) the Al Sharqi family (ruled by Sheikh Hamad bin Mohammed Al Sharqi of Fujairah); (5) the Al Qasimi family (ruled by Sheikh Sultan bin Mohammed Al Qasimi of both Sharjah and Ras-al-Kaimah); and (6) the Al Mu'alla family (ruled by Sheikh Saud bin Rashid Al Mu'alla of Umm Al Quwain). See *The Royal Families of the UAE*, WORLD ATLAS (Aug. 1, 2017), <https://www.worldatlas.com/articles/royal-families-of-the-uae.html>.

87. The Qawasim, who were primarily land and sea merchants, now reside in Ras al Khaimah and Sharjah. The Bani Yas, who were agricultural and pastoral, resided in what is now Abu Dhabi and Dubai. *Country Profile, United Arab Emirates (UAE)*, *supra* note 81.

88. *Id.*

89. *The UAE Leaders*, *supra* note 86.

90. *supra* note 86.

91. *Id.*

92. *Id.*



In the late 1950s, after the initial discovery of oil in Abu Dhabi, many of the Gulf states saw an influx of migrant labor.<sup>93</sup> When oil was first discovered beneath the waters of Abu Dhabi in the 1950s, the UAE, like many other Gulf states at the time, was hoping to commercialize the sale of oil as a main export.<sup>94</sup> As the country's oil infrastructure grew primarily in the late 1970s, the UAE began importing cheap labor from Southeast Asia.<sup>95</sup>

By 2006, the UAE and other neighboring Gulf states were working together to create a Gulf Cooperation Council monetary union,<sup>96</sup> which would unify the Gulf states in an attempt to centralize the region's oil industry. The deal never came to fruition, however, because of the UAE's economic concerns following the global financial crisis of 2008.<sup>97</sup> In addition, the UAE became apprehensive when the Council proposed that the prospective Gulf monetary union's business affairs and central bank be

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93. Petroleum was found on the coast of Abu Dhabi in 1960, and in 1962, commercial production began extracting and selling the resource *The UAE Leaders*, *supra* note 86. As a result, Abu Dhabi experienced significant wealth to the sheikhdom, and remains the largest and most affluent emirate. *Id.* After Sheikh Zayed replaced his brother as the ruler of Abu Dhabi, he created programs from the income of the petroleum industry and allocated them for public works and welfare services for Emirati nationals. *Id.* Later, in 1966, oil was discovered in Dubai, which also consequently developed a significantly robust economy. *Id.* See also Heather E. Murray, *supra* note 50.

94. See *United Arab Emirates Profile — Timeline*, BBC NEWS (May 14, 2018), <http://www.bbc.com/news/world-middle-east-14704414>.

95. BARRY MIRKIN, ARAB HUMAN DEVELOPMENT REPORT: POPULATION LEVELS, TRENDS AND POLICIES IN THE ARAB REGION: CHALLENGES AND OPPORTUNITIES (U.N. Dev. Programme 2010). See also A. A. Kubersi, *Oil, Influence and Development: The Gulf States and the International Economy*, 41 INT'L J. 362 (1986), <https://www.jstor.org/stable/40202374>.

96. Absent the UAE amid doubts of its success, Saudi Arabia, Kuwait Qatar and Bahrain create a joint bank. *Gulf Monetary Union Agreement Enacted, Kuwait Says*, REUTERS (Dec. 25, 2009), <http://in.reuters.com/article/idINIndia-44735520091215>.

97. Considered one of the worst economic disasters since the Great Depression, the global financial crisis of 2008 was a result of authorizing loans to people for houses with interest rates they could not afford, along with a trend towards deregulation of the banking system. Before the crisis became irreversible, the government decided to bail out the banks and lenders intertwined with distributing the loan, costing taxpayers \$350 billion USD. See *The 2008 Financial Crisis*, BALANCE, <https://www.thebalance.com/2008-financial-crisis-3305679> (last updated Oct. 5, 2018). See generally *United Arab Emirates Profile — Timeline*, *supra* note 92.

headquartered in Riyadh, Saudi Arabia.<sup>98</sup> Despite the financial crisis, the UAE continued to independently expand its infrastructure by building roads, skyscrapers,<sup>99</sup> and even a man-made island.<sup>100</sup> As a result of economic growth, and with the promise of large-scale infrastructure projects, the construction sector of the UAE demanded a huge influx in migrant labor.<sup>101</sup>

The UAE is the world's seventh largest provider of oil, and a significant amount of its economic growth derives from selling oil and natural gas.<sup>102</sup> Oil exports makes up about one-quarter of the country's gross domestic product.<sup>103</sup> Although the UAE's economy is largely driven by its oil reserves, the country has also shifted its attention to investing in tourist attractions to entice more people to the region.<sup>104</sup> This is a clever strategy for the UAE, as it is looking to grow its tourism and business travel into sustainable industries after the oil depletes.<sup>105</sup> The tourism

98. *UAE Quits Gulf Monetary Union*, FIN. TIMES (May 20, 2009), <https://www.ft.com/content/822cab2e-4534-11de-b6c8-00144feabdc0>.

99. In the year 2018, a total of 4,000 active projects worth an estimated \$313.6 billion USD were pursued. See U.S. DEP'T COM., INT'L TRADE ADMIN., UNITED ARAB EMIRATES COUNTRY COMMERCIAL GUIDE, UAE — CONSTRUCTION (Apr. 23, 2018), <https://www.export.gov/article?id=United-Arab-Emirates-Construction>. See also, *Expo 2020 Dubai UAE*, EXPO2020, <https://www.expo2020dubai.com/> (last visited Dec. 3, 2018) (Much of the efforts regarding infrastructure are in response to the upcoming Expo, 2020 in Dubai, which is a government-sponsored event inviting leaders in science, technology, art and business to discover innovative projects happening in the UAE.).

100. Dubai has four man-made islands: (1) The Palm Jumeirah, (2) Deira Island, (3) Palm Jebel Ali, and (4) "The World." Launched in 2001, Palm Jumeirah is one of the largest man-made islands in the world and is intentionally shaped like a palm tree. Deira Island is one of the recent developments and is set to launch prior to the Expo 2020. See UNITED ARAB EMIRATES COUNTRY COMMERCIAL GUIDE, *supra* note 98. Palm Jebel Ali, which is projected to be completed in 2021, will include a water theme park, elaborate boardwalks and odes to Arabian poets, with luxurious homes built on stilts and six marinas. *Id.* Finally, The World is an artificial island located in Dubai that will resemble a map of the world in aerial view. *Id.* The project began in 2003, but slowed down due to the financial crisis of 2008. *Id.*

101. Murray, *supra* note 50.

102. *The UAE and Global Oil Supply*, EMBASSY U.A.E., <http://www.uae-embassy.org/about-uae/energy/uae-and-global-oil-supply> (last visited Oct. 7, 2018).

103. *Id.*

104. DAVID S. SORENSON, AN INTRODUCTION TO THE MODERN MIDDLE EAST: HISTORY, RELIGION, POLITICAL, ECONOMY, POLITICS 15 (Westview Press 2d ed. 2013).

105. *Id.*

sector is also looking to recruit migrant workers to fill the anticipated 684,000 job vacancies expected by 2025.<sup>106</sup> The focus on developing tourism and the façade of a glamorous “playground for the rich”<sup>107</sup> is likely to have played well with the migrant workers who were propagandized into presuming they could have access to the wealth accruing within the UAE.<sup>108</sup>

On January 1, 2018, Saudi Arabia and the UAE imposed a 5 percent tax, referred to as a value-added tax (VAT), on such items as food, clothes, electronics, petrol, water and electricity bills, and hotel reservations.<sup>109</sup> As the countries with the two largest economies in the Gulf, Saudi Arabia and the UAE have implemented this tax in response to suggestions from the International Monetary Fund to diversify their economies.<sup>110</sup> The remaining GCC<sup>111</sup> countries are expected to join in the enforcement of the VAT after the efforts of the UAE and Saudi Arabia.<sup>112</sup> This tax is negatively affecting migrant workers in both countries because although workers who were enticed by the prospect of a tax-free salary are earning more money than they would at home, their wages remain meager.<sup>113</sup> Since most migrant workers do not earn a living wage, the taxes on necessary goods and services within the UAE has great potential to

106. WORLD TRAVEL & TOURISM COUNCIL, TRAVEL AND TOURISM: ECONOMIC IMPACT 2015, UNITED ARAB EMIRATES (2015), available at <https://www.wttc.org/-/media/files/reports/economic%20impact%20research/countries%202015/unitedarabemirates2015.pdf>.

107. See generally *Dubai: A Playground for the Rich and Famous*, DUBAI INVESTMENT NEWS (Mar. 14, 2016), <https://www.thefirstgroup.com/en/news/2016/3/dubai-a-playground-for-the-rich-and-famous/>.

108. *Id.*

109. See *Value Added Tax (VAT)*, OFFICIAL PORTAL U.A.E. GOV'T, <https://government.ae/en/information-and-services/finance-and-investment/taxation/value-added-tax-vat> (last updated Oct. 8, 2018). Amr Mostafa, *Saudi Arabia, UAE Expand Tax Base to Diversify Oil-Reliant Finances*, DPA INT'L (Jan. 1, 2018), <http://www.dpa-international.com/topic/saudi-arabia-uae-expand-tax-base-diversify-oil-reliant-180101-99-464471>.

110. *Id.*

111. See Gulf Cooperation Council, *supra* note 26. See also *Gulf Cooperation Council (GCC)*, MINISTRY EXTERNAL AFF., GOV'T INDIA (Feb. 2013), [https://www.mea.gov.in/Portal/ForeignRelation/Gulf\\_Cooperation\\_Council\\_MEA\\_Website.pdf](https://www.mea.gov.in/Portal/ForeignRelation/Gulf_Cooperation_Council_MEA_Website.pdf).

112. *Id.*

113. Narender Pulloor, *VAT, A Hard Blow to Gulf Migrants*, DECCAN CHRONICLE (Jan. 3, 2018), <https://www.deccanchronicle.com/nation/current-affairs/030118/vat-a-hard-blow-to-gulf-migrants.html>.

interfere with the money these workers send back to their native countries.<sup>114</sup> The migrant community is also experiencing concerns over debt incurred from exorbitant fees charged by recruiting agencies who promise to assist with jobs in the Gulf, only to take from workers their scarce monetary resources and autonomy.<sup>115</sup> Many of the migrant workers bring items, such as gold, cosmetics, and other consumer goods back to their home countries, but are now be faced with a tax<sup>116</sup> that could make these practices unaffordable.<sup>117</sup>

#### *A. UAE Business Practices Cause Concern for Migrant Workers' Rights*

The UAE's unique, liberal business practices are also a cause for concern. The UAE utilizes a system known as free zones, which allows businesses to incorporate without legal obligations to pay corporate or income tax fees.<sup>118</sup> In addition to these benefits, corporations are also free from audits and are largely uninterrupted with respect to control over their business practices.<sup>119</sup> Large Western businesses are enticed by the tax-free zones alongside the prospect of having cheap laborers.<sup>120</sup> Although these zones provide a competitive edge and encourage uninhibited entrepreneurship, many oil conglomerates have taken advantage of these free zones by employing low-wage labor to build oil pipelines and structures.<sup>121</sup> The free trade zones exacerbate the issue of labor protection for migrant workers because these

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114. *Id.*

115. *Id.*

116. *See Value Added Tax (VAT)*, *supra* note 108.

117. *Id.*

118. There are forty free zones in the UAE.

*See Nine Reasons for Entrepreneurs to Set Up in UAE Free Zones*, VIRTUZONE (Jan. 26, 2017), <https://vz.ae/nine-reasons-entrepreneurs-set-uae-free-trade-zones/>. To encourage an entrepreneurial spirit, the UAE free zones allow business owners to enjoy full tax-free foreign ownership, exemptions from both import and export tax, no corporate tax, and various measures to assist with recruitment. *Id.* Normally, foreign investors must have a local partner if the business requires licensing that is industrial or commercial. *Id.* In free zones, however, foreign investors are exempt from this usual requirement and can recruit a local business partner if they choose. *Id.*

119. *Id.*

120. *Id.*

121. M. Sen, *UAE Free Zones See Dh515b (515 Billion Dirhams) in Trade*, GULF NEWS (Nov. 12, 2015), <http://gulfnews.com/gn-focus/special-reports/economy/uae-free-zones-see-dh515b-in-trade-1.1618032>.

zones tend to accommodate the business owner.<sup>122</sup> Of the forty-five free trade zones, twenty are in Dubai.<sup>123</sup> Dubai's free trade zones allow businesses to go almost unregulated by the government, essentially becoming an extreme laissez-faire experiment and a dream for foreign investors.<sup>124</sup>

The effects of globalization throughout the last six decades subsequent to the discovery of oil reserves in the UAE in the 1950s have proven to be challenging for low-wage migrant workers because these workers are not only stuck in a cycle of manual labor, but they are also not afforded the opportunity to participate in the free zone markets they are creating.<sup>125</sup> There are less protections for migrant workers in the UAE as compared to other countries, particularly those in the West.<sup>126</sup> For example, the United States has federal regulatory agencies and laws, as well as state statutes that protect employees from

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122. John Lahad, *Dreaming a Common Dream, Living a Common Nightmare: Abuses and Rights of Immigrant Workers in the United States, the European Union and the United Arab Emirates*, 31 HOUS. J. INT'L. 653 (2009).

123. *Id.*

124. Many experts, however, would offer a contrary approach, believing that these incentives provide entrepreneurs with valuable head starts and help to boost the economy. See *Nine Reasons for Entrepreneurs to Set Up in UAE Free Zones*, *supra* note 116. Advantages of the 'free trade zone' phenomenon include:

- (1) allows 100 percent foreign national ownership of firm with no requirement of local sponsor or local service agent, (2) waiver of corporate taxes (time-bound and renewable for further periods) (3) exemption from personal taxes as well as import and export taxes (4) 100 percent repatriation of revenue and profits (5) documentation is less and more suited to foreign investors (6) long-term leasing options (up to 25 years) available at great terms to investors (7) recruitment and workforce processes are simplified, faster and cheaper (8) easy availability of legal, housing, immigration, labour and other facilities (9) incorporation is faster than when done outside free zones (10) 100 percent free of transfer funds.

Dona Cherian, *45 Free Zones in the UAE: Find the Right One for Your New Business*, GULF NEWS (Aug. 15, 2017), <http://gulfnews.com/guides/life/community/45-free-zones-in-the-uae-find-the-right-one-for-your-new-business-1.1716197>.

125. Randy Capps et al., *A Profile of the Low-Wage Immigrant Workforce*, URBAN INSTITUTE (Oct. 27, 2003), <http://webarchive.urban.org/publications/310880.html>.

126. *Id.*

discriminatory practices and harsh working conditions.<sup>127</sup> Even though Western countries have not always complied with international standards of labor law,<sup>128</sup> many of them still subscribe to these ideals and have signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>129</sup> The enforcement of applicable labor laws within the United States, unlike their enforcement in the UAE, is not arduous and is easily accessible.<sup>130</sup> In a 2015 human rights report by the United States Bureau of Democracy, Human Rights and Labor, the UAE's lack of judicial independence, its restriction of worker's rights, and the lack of governmental transparency and access to the court system constituted human rights issues in the country.<sup>131</sup> The global economic crisis affected not only the housing market, but also trickled down to the oil and gas industry in the UAE as global oil prices fell.<sup>132</sup>

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127. The United States in particular has been progressive in providing protections under labor and employment law. Some of these federal regulations include: (1) the Family Medical Leave Act; (2) the Americans with Disabilities Act; (3) the Civil Rights Act of 1964; (4) the Fair Wage and Labor Act; (5) the Occupational Safety and Health Act; and (6) the Federal Mine Safety and Health Act. *See Summary of the Major Laws of the Department of Labor*, U.S. DEPT' LAB., <https://www.dol.gov/general/aboutdol/majorlaws> (last visited Oct. 7, 2018). In addition to some of these federal protections, varying states have supported additional protections for workers. *Id.*

128. *Id.*

129. G.A. Res. 45/158, *supra* note 72, art. 2.

130. In light of the "Me Too" Movement, and the uphill attempts to halt sexual assault, harassment and discrimination in the workplace, the U.S. Equal Employment Opportunity Commission is the body that enforces federal laws which prohibit employment discrimination in the United States. There are also a series of laws protecting against retaliation or denial of reasonable accommodation in the workplace. *See generally Labor Laws and Issues*, USA.GOV, <https://www.usa.gov/labor-laws> (last visited Oct. 7, 2018); Allison Doyle, *List of U.S. Employment Laws: What the Law Says About Wages, Work Safety, Discrimination and More*, BALANCE (Sept. 15, 2017), <https://www.thebalance.com/list-of-employment-laws-2062282>.

131. *See generally* U. S. DEPT' OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, UNITED ARAB EMIRATES 2015 HUMAN RIGHTS REPORT (2015), <https://www.state.gov/documents/organization/253163.pdf>.

132. Oil prices fell from \$144.29 USD in July 2018 to \$33.87 USD in December of the same year. *See Why This Oil Crisis is Different to 2008*, OIL & GAS 360 (July 17, 2016), <https://oilprice.com/Energy/Energy-General/Why-This-Oil-Crisis-Is-Different-To-2008.html>. *See also Summary of the Major Laws of the Department of Labor*, U.S. DEPT' LAB., <https://www.dol.gov/general/aboutdol/majorlaws> (last visited Dec. 3, 2018).

In a country like the UAE, which is largely influenced by Islamic law and principles,<sup>133</sup> some international resolutions recognize the importance of affording rights related to working conditions and liberty.<sup>134</sup> Deidre McPhillips, a data expert, points out that a drop in falling oil prices has encouraged the UAE to seek other ways to generate revenue beyond its main commodity. Mainly, the UAE must focus on reforming its vision for the future through its use of a second important resource: labor.<sup>135</sup> Notwithstanding all of the economic progress attained from the oil industry,<sup>136</sup> the UAE never prioritized providing migrant

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133. Islamic law is based on the Quran, the holy book of Muslims. The law, often referred to as Shari'a, is one way of interpretation and understanding within the Muslim faith community. See *Understanding Islamic Law*, ISLAMIC SUP. COUNCIL AM., <http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html> (last visited Oct. 7, 2018). Shari'a most often carries with it the disciplines and principles that govern the behavior of a Muslim individual towards himself or herself, family, neighbors, a community, a city, a nation, and the Ummah—the Muslim polity as a whole. *Id.* Similarly, Shari'a governs the interactions between communities, groups and social and economic organizations. *Id.* Shari'a establishes the criteria by which all social actions are classified, categorized and administered within the overall governance of the state. *Id.*

134. See Cairo Declaration on Human Rights, *supra* note 60. According to Article 13 of the Cairo Declaration on Human Rights,

Everyone shall be free to choose the work that suits him best and which serves his interests as well as those of the society. The employee shall have the right to enjoy safety and security as well as all other social guarantees. He may not be assigned work beyond his capacity nor shall he be subjected to compulsion or exploited or harmed in any way. He shall be entitled-without any discrimination between males and females-to fair wages for his work without delay, as well as to the holiday allowances and promotions which he deserves. On his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have grievances redressed, the rights confirmed and justice enforced without bias.

Cairo Declaration of Human Rights in Islam, *supra* note 60. Article 14 further states: "Everyone shall have the right to earn a legitimate living without the monopolization, deceit, or causing harm to oneself or to others." *Id.*

135. McPhillips, *supra* note 35.

136. The first export of crude oil in 1962 from Abu Dhabi marked the steady growth and modernization of the UAE. See *History*, EMBASSY U.A.E.,

workers with employment rights, ultimately creating a barrier for substantial labor law enforcement.<sup>137</sup>

## II. LABOR LAW AND THE COURT SYSTEM IN THE UAE

The UAE has a civil law system<sup>138</sup> intertwined with Shari'a principles,<sup>139</sup> which are Islamic practices that influence the law.<sup>140</sup> Although Shari'a is often interpreted differently by various Islamic legal scholars as being law,<sup>141</sup> whether the principles are considered law depend on the regional interpretation.<sup>142</sup> In contrast to other proximate countries like Iran and

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<https://www.uae-embassy.org/about-uae/history> (last visited Dec. 3, 2018). The revenue from the export of oil under Sheikh Zayed, the Ruler of Abu Dhabi, "resulted in an infrastructure overhaul with the construction of schools, housing, hospitals and roads throughout Abu Dhabi." *Id.*

137. *Human Rights Watch Submission to the CEDAW Committee of Oman's Periodic Report for the 68th Session*, HUM. RTS. WATCH (Oct. 10, 2017), <https://www.hrw.org/news/2017/10/10/human-rights-watch-submission-cedaw-committee-omans-periodic-report-68th-session>.

138. The core principles of law in the UAE are influenced by Shari'a, and it is best described as a mix of Islamic and European concepts of civil law. *See generally* Ahmed, et al., *supra* note 55. The UAE enacted both civil and commercial codes and has legislated on legal issues related to labor law and intellectual property. *Id.*

139. Shari'a is not a legal system, but a cultural practice and way of life for those who practice this sect of Islam. *See* Ahmed Aly Khedr and Bassam Al-nuaimi, *A Guide to United Arab Emirates Legal System*, HAUSER GLOBAL L. SCH. PROGRAM (June 2010), [http://www.nyulawglobal.org/globalalex/United\\_Arab\\_Emirates.html](http://www.nyulawglobal.org/globalalex/United_Arab_Emirates.html). This form of practice often emphasizes the traditional and early interpretation of the holy book, Quran, and its prophet Muhammad. *Id.* After Muhammad died, many of his relatives and devout followers would tell stories about what the Prophet has done or has said, and those stories became known as "Hadith." *Id.* After they found patterns in some of the questions many people had about the faith, they began to put Shari'a together to include joined practices. *Id.* The goal was to get as close to what the Prophet Muhammad would have wanted. *Id.* The extent of Shari'a as a concept of law in the UAE consists of social laws such as family law or divorce. *Id.* Commercial matters are often dealt with by civil courts or arbitration.

140. Ahmed, *supra* note 139.

141. Islamic law emerged out of Shari'a and its interpretations to evolve with the current climate. As a result of the rising tension between the Shari'a practicing countries, scholars have called for a new "ijtihad," meaning a new interpretation of Shari'a that evolves with the times. *See Sharia Law — A Literary Zikr Project*, MUSLIMS PROGRESSIVE VALUES, <http://www.mpvusa.org/sharia-law/> (last visited Oct. 7, 2018).

142. *Id.*



Afghanistan,<sup>143</sup> this cultural practice does not override the principles set forth in the court system of the UAE.<sup>144</sup> Islamic law does play a role in shaping the court structure, however, and is an integral part of addressing a plethora of legal issues.<sup>145</sup>

The organizational structure of the legal system is based on the UAE's Constitution of 1971.<sup>146</sup> Aside from Dubai, Abu Dhabi, and Ras Al Khaimah, which have separate independent judicial systems, the UAE has a federal judiciary system comprised of three courts: the Court of First Instance, the Court of Appeal, and the Court of Cassation.<sup>147</sup> The three individual judiciary systems have exclusive jurisdiction and are sovereign.<sup>148</sup> The Court of First Instance controls most of the litigation process, including scheduling hearings and appointing experts.<sup>149</sup> Instead of using a balancing test or burden of proof that equates to "beyond a reasonable doubt," every final decision is made at the judge's discretion,<sup>150</sup> and there is no opportunity for a jury trial.<sup>151</sup> All court proceedings are in Arabic, and any court documents used by the court that are not in Arabic are translated by a designated agent of the country.<sup>152</sup>

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143. In the Islamic Republic of Iran, absent the proper case law, judges may decide cases based on authoritative Islamic sources. See Reza Banakar & Keyvan Ziaee, *The Life and Law in the Islamic Republic of Iran*, IRANIAN STUD. J. (June 26, 2018), <https://www.tandfonline.com/doi/full/10.1080/00210862.2018.1467266>. Although it is also a hybrid of civil and Shari'a, many of the judges are deciding based on the rules of *fiqh* (Islamic jurisprudence) which is largely informal and provides "concerns for delivering substantive justice." *Id.* See also Omar Sial & Md. Ershadul Karim, *Islamic Republic of Afghanistan Legal System and Research*, HAUSER GLOBAL L. SCH. PROGRAM (Nov. 2018), <http://www.nyulawglobal.org/globalex/Afghanistan1.html>.

144. *Id.*

145. Islamic law address issues related to family law, criminal law and procedure. *Sharia Law — A Literary Zikr Project*, *supra* note 140.

146. See generally *United Arab Emirates' Constitution of 1971 with Amendments through 2004*, CONSTITUTE PROJECT (Jan. 17, 2018), [https://www.constituteproject.org/constitution/United\\_Arab\\_Emirates\\_2004.pdf](https://www.constituteproject.org/constitution/United_Arab_Emirates_2004.pdf).

147. *Id.* at art. 95.

148. *Id.* at art. 104.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

A litigant may have the opportunity to be heard in the Dubai International Financial Centre (DIFC) court,<sup>153</sup> which is a separate common law judicial system that conducts cases in English, with the authority to hear local or international cases related to commercial disputes.<sup>154</sup> As of 2017, DIFC courts may now hear labor disputes.<sup>155</sup> A judgment of the DIFC court can be enforced by the New York Convention<sup>156</sup> and onshore Dubai courts.<sup>157</sup> Out of all of the claims allowed to be brought to UAE courts, employment-related disputes are only given a one-year statute of limitations.<sup>158</sup>

The UAE is so appealing to employers precisely because there are few laws to protect migrant workers.<sup>159</sup> The Operational Risk Report recently found:

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153. The DIFC represents a business area known to have various international entities and employees. This region is most often associated with its common law, less regulation and favorable taxes which make it an ideal business hub. *About*, DUBAI INT'L FIN. CENTRE, <https://www.difc.ae/about> (last visited Oct. 7, 2018).

154. *Id.*

155. Nagraj, *supra* note 80.

156. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention, is an international agreement focusing on the enforcement and recognition of arbitral awards made in a foreign court. The Convention is one of the key tools used by participating countries who have signed the document and governs the rules associated with conducting arbitration, as well as arbitral awards.

*The New York Convention*, N.Y. ARB. CONVENTION, <http://www.newyorkconvention.org/> (last visited Oct. 7, 2018).

157. *Id.*

158. *Id.*

159. In 2016, a series of reforms attempted to improve the lives of migrant workers by protecting their rights and providing oversight on employee agreements. *See Labor Rights in the UAE*, EMBASSY U.A.E., <https://www.uae-embassy.org/about-uae/human-rights/labor-rights-uae> (last visited Dec. 3, 2018). These reforms helped to define contract terms, provided guidance parameters on how contracts may be broken, and made it easier for temporary workers to change employers. *Id.* In addition, the Ministry of Human Resources and Emiratization launched a "Know Your Rights" pamphlet that temporary workers receive once they arrive at the airport pertaining to their new work contracts. *Id.* The UAE government has also passed reforms related worker compensation such as the Wage Protection System (WPS) for proper and timely compensation. *Id.* Penalties for employers include the denial of new licenses to those who cannot demonstrate full compliance with labor laws in the UAE. *Id.*

[T]he UAE's cost environment is seen as highly competitive due to the lack of a nationally legislated minimum wage, low social benefits burden for employers, that no severance pay is required in cases of redundancy dismissal, and that labour unions and strike activity are considered unlawful under Emirati law. Employers will find labour fairly easy to access when compared to most other GCC states due to the country's fairly large working-age population, highly formal workforce participation and urbanization rates, and the comparative ease associated with importing foreign labour to work in the country. . . . Additional positive characteristics such as the UAE's liberal trade regime and foreign investment incentives offered by its numerous FTZs [free trade zones] assist further in boosting the country's score. There are minimal barriers posed by state intervention in the economy as shown by the countries [sic] low time and cost burdens for tax, as well as the UAE having a strong capacity to tap international debt markets for any external financial needs. The Emirati legal environment is one of the best in the MENA region and business operation is not hampered by high levels of bureaucratic red tape or corruption.<sup>160</sup>

These indicators demonstrate the benefits of business persons who are looking to start or grow their business. The demand for a free market that provides ample incentives for growth and the ability to recruit low-wage labor without hassle make the UAE an appealing place for businesses.

Some efforts have been made to ensure that citizens migrating to the UAE are educated about the local labor laws, such as providing them with "Know Your Rights" pamphlets outlining the employer-employee relationship.<sup>161</sup> On the surface level, it may appear that these small efforts by the UAE government are helping to bridge the gap between employees and employers. These pamphlets are meant to outline major rights afforded to the expatriate—not the migrant worker.<sup>162</sup>

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160. UNITED ARAB EMIRATES, UNITED ARAB EMIRATES OPERATIONAL RISK REPORT, Q4 (2017).

161. *Id.* at note 160.

162. The law provisions of UAE labor law in the private sector include:

[1] Article 65 . . . identifies the normal working hours for the private sector as 8 hours per day or 48 hours per week.

[2] The working hours may be increased to 9 hours a day for businesses, hotels and cafes after approval from MoHRE.

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[3] Government entities are not governed by the labor law and they operate 7 hours daily.

[4] Working for more than 7 hours a day is prohibited in arduous or unhealthy works and industries.

[5] Normal working hours are reduced by two hours daily during the holy month of Ramadan.

[6] Overtime is considered if the nature of job demands working beyond normal working hours and it will entitle the employee for a pay equal to normal working hours' remuneration plus 25 [percent] of that pay. It could increase to 50 [percent] if overtime is done between 9 pm and 4 am. . . .

[7] Employees are entitled to an annual leave of: 2 days per month, if they have completed six months of service but not one year [and] 30 days, if they have completed one year of service.

[8] Employees are entitled to sick leave of not more than 90 days per year subject to conditions stipulated in the law. They will receive full pay for the first 15 days, half pay for the next 30 days and no pay for the rest 45 days. . . .

[9] Working females are entitled to 45 days of full pay for maternity leave provided that she has served continuously for at least one year. . . . For the first 18 months following delivery, female employees who nurse their child are granted two paid rest intervals per day, not exceeding 30 minutes. . . .

[10] Working fathers are not provided paternity leave under the law. . . .

[11] There is no minimum salary stipulated in UAE Labour Law[;] however, it broadly mentions that salaries must cover basic needs of the employees. . . .

[12] If the employee resigns of his or her own free will before completing one year, then they will not be entitled to any gratuity pay. The worker is entitled to a gratuity for the served fraction of a year, provided that he completes one year of continuous service.

No minimum wage exists for migrant workers.<sup>163</sup> In addition, despite laws prohibiting the confiscation of one's passport without the consent of an employee,<sup>164</sup> many migrant workers' passports are taken and withheld by their employers for significant amounts of time.<sup>165</sup> Some employers need to hold the passport to assist in processing the work visa, which is a document that permits an expatriate to live and work legally in the country and that also allows the employee to set up a bank account and apply for credit.<sup>166</sup> The confiscation of an employee's passport, however, must be voluntarily authorized through non-coerced consent.<sup>167</sup> In as early as 2014, the International Labour Organization brought a grievance under the International Trade Union Confederation for the confiscation of passports, alleging the UAE's migrant recruitment practices constituted:

forced labour . . . throughout the UAE and in all economic sectors. It is the result of a combination of deception about the nature of the work, wages and working conditions, induced indebtedness by the charging of fees and salary deductions, *the confiscation of passports* and a sponsorship system that not only prevents workers from transferring from abusive

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163. *United Arab Emirates Labour and Employment Law*, EMP. L. ALLIANCE, <https://www.employmentlawalliance.com/globalemployerhandbook/unitedarabemirates> (last visited Oct. 7, 2018).

164. *See Preparing to Work*, OFFICIAL PORTAL U.A.E. GOV'T, <https://www.government.ae/en/information-and-services/jobs/preparing-to-work> (last updated Nov. 27, 2018).

165. Passports are considered to be the property of the country in which they were issued and have general notes specifying that people should not give their passport to anyone who is not a body authorized by the government. Withholding of an employee passport is considered a violation of International Labor Organization's Convention on the Abolition of Forced Labour, and the UAE is a signatory. *See Abolition of Forced Labour Convention* (ILO No. 105), 320 U.N.T.S. 291 (Jan. 17, 1959), <http://hrlibrary.umn.edu/instate/n2ilo105.htm>. *See also Retention of Passports by Employers — Legal Position*, PANICKER PARTNERS, [panickerpartners.net/print-article.php?pid=37&postid=3092](http://panickerpartners.net/print-article.php?pid=37&postid=3092) (last visited Oct. 7, 2018).

166. *Preparing to work*, *supra* note 164. "Foreigners planning to work in the UAE must know that they cannot work on visit visas or tourist visas. They need legitimate work/residency visa/permit to be able to live and work legally in the UAE. The employer needs to procure the work and residency permits. Working without first obtaining the proper visa status is illegal and could lead to imprisonment, fines and/or deportation. The penalties apply to both: the employer and the employee." *Id.*

167. *Retention of Passports by Employers — Legal Position*, *supra* note 165.

employers, but also subjects workers to the threat of deportation if they object to their working conditions.<sup>168</sup>

Employers are only allowed to take an employee's passport through written consent when processing or cancelling a visa.<sup>169</sup> Otherwise, it is illegal for an employer to confiscate a passport when an employee is coerced into providing his or her passport for an indefinite amount of time.<sup>170</sup> An employee who complies with such a demand is presumed to only do so out of the fear of losing his or her job.<sup>171</sup>

The UAE's Ministry of Interior has sent out a press release educating the public and employers that "retention of the passports of the employees by the employers is considered to be illegal and is punishable by law."<sup>172</sup> Overall, the labor law prohibiting involuntary passport confiscation<sup>173</sup> in the UAE was enacted as a response to the power dynamics of having an employee hand over his or her passport to an employer.<sup>174</sup> Intimidation by employers continues to pose a threat to migrant workers who involuntarily relinquish their passports and are readily controlled by their places of work.<sup>175</sup>

### III. THE GROWING EFFECTS OF NEGLECT IN INTERNATIONAL LABOR LAW

This Part examines the standards of international governing bodies pertaining to labor rights for migrant workers. It analyzes the role of the UAE in participating with these actors to

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168. Int'l Lab. Org. [ILO], *Seventh Supplementary Report: Report of the Committee Set Up to Examine the Representation Alleging Non-Observance by the United Arab Emirates of the Forced Labour Convention, 1930 (No. 29), Made Under Article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC)*, ILO Doc. GB.326/INS/15/7 (Mar. 26 2016), [https://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—relconf/documents/meetingdocument/wcms\\_462786.pdf](https://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_462786.pdf) (emphasis added).

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. International Labor Organization's Convention on the Abolition of Forced Labour, *supra* note 164.

174. *Seventh Supplementary Report: Report of the Committee Set Up to Examine the Representation Alleging Non-Observance by the United Arab Emirates of the Forced Labour Convention*, *supra* note 167.

175. *Id.*

develop, maintain and implement purposeful labor practices for migrant workers.

*A. The International Law Standard: Government Bodies and Independent Agencies' Promulgation of Applicable Labor Law Provisions*

Many Western countries, such as the United States, have organizations<sup>176</sup> that monitor human rights domestically and throughout the world.<sup>177</sup> The United Nations is arguably the premier institution with the capability to monitor and also develop substantial provisions and guidelines for the world to follow.<sup>178</sup> The most well-regarded international guide on human rights is arguably the Universal Declaration of Human Rights. Chartered by the United Nations, the Declaration upholds ideals regarding labor, which include “the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment,” as well as “the right to equal pay for work,” to “just and favourable remuneration,” and “the right to form and to join trade unions.”<sup>179</sup>

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176. Internationally recognized human rights organizations include Amnesty International, Human Rights Watch, the International Labour Organization, the Lawyers Committee for Human Rights, the Office of the UN High Commissioner for Refugees, the United Nations Foundation, and the United Nations International Children's Emergency Fund (UNICEF). See *Internationally Known Human Rights Organizations*, U. MINN. HUM. RTS. LIBR., <http://hrlibrary.umn.edu/center/fellowshipguide/hrorgs.shtm> (last visited Dec. 3, 2018).

177. *Id.*

178. Sonia Cardenas, *Emerging Global Actors: The United Nations and National Human Rights Institutions*, 9 GLOBAL GOVERNANCE 23–42 (2003), available at [https://www.jstor.org/stable/27800462?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/27800462?seq=1#page_scan_tab_contents). See also Jost Delbruck, *The Role of the United Nations in Dealing with Global Problems*, 4 IND. J. GLOBAL LEGAL STUD. 277 (1997), available at <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1096&context=ijgls>.

179. Adopted on December 10, 1948, the Universal Declaration of Human Rights was written in response to the Second World War and the atrocities that happened during the Holocaust. G.A. Res. 217 (III) A, *supra* note 60. Viewed as the “international bill of rights,” the document was drafted by eighteen members of the Commission on Human Rights. *Id.* The UAE is not a signatory, although it is a signatory to the Arab Charter of Human Rights treaty as of December of 2013. See also *The UAE and Human Rights*, U.A.E. MINISTRY FOR. AFF. & INT'L COOPERATION, <https://www.mofa.gov.ae/EN/TheUAE/Pages/UAE-and-Human-Rights.aspx>

The UAE has ratified and signed nine treaties from conventions related to labor regulation.<sup>180</sup> Still, it refuses to ratify the Domestic Workers Convention of 2011.<sup>181</sup> Although domestic workers are invariably different from migrant workers<sup>182</sup> and are often discussed as comprising a separate group in academic scholarship,<sup>183</sup> it is important to note that the international community is not convinced that this subset of migrant workers is afforded protection rights under the law.<sup>184</sup> Domestic workers in the UAE, like migrant workers, have had significant trouble gaining legal protections.<sup>185</sup> Similar to migrant workers, domestic workers have been subject to abuses, such as unreasonable pay and little to no rest periods.<sup>186</sup> Many domestic workers live with their employers as nannies or caretakers, and they often are prohibited from having a life outside of their respective job titles.<sup>187</sup> These laborers have traditionally been women who are subject not only to substantial human rights abuses, but to

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(last visited Dec. 3, 2018). *See also* International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 52, art. 5.

180. *Ratifications for United Arab Emirates*, INT'L LAB. ORG., [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103495](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103495) (last visited Oct. 7, 2018).

181. The Domestic Workers Convention of 2011 was a gathering of countries along with the Governing Body of the International Labour Office to discuss, promote and adopt protections for domestic workers internationally. *See 100th ILO Annual Conference Decides to Bring an Estimated 53 to 100 Million Domestic Workers Worldwide Under the Realm of Labour Standards*, INT'L LAB. ORG. (June 16, 2011), [http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS\\_157891/lang=en/index.htm](http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang=en/index.htm). The Convention acknowledged that domestic work is a unique profession and is often desirable for women and girls in developing countries. *Id.*

182. Female Domestic workers account for at least 146,000 are employed to care for families as nannies, cooks, and cleaners. *Id.* Many of these women come from countries such as the Philippines, Indonesia, India, Bangladesh, Sri Lanka and Nepal. *Id.* These women deal with various abuses: unpaid wages, confinement, workdays as long as twenty-one hours without any breaks, no days off, and physical and sexual assault by their employers. *Id.*

183. *Id.*

184. *See generally* Int'l Labour Org. [ILO], Concerning Decent Work for Domestic Workers arts. 3-4, June 16, 2011, ILO No. 189, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189).

185. Murray, *supra* note 50.

186. *Id.*

187. *Id.*



sexual violence and harassment as well.<sup>188</sup> With the help of various non-governmental organizations committed to the promotion and enforcement of these rights under the Domestic Workers Convention, the UAE has committed to implementing regulations that will coincide with the International Labour Organization's Domestic Workers Convention, which was held in 2017.<sup>189</sup>

Unlike most domestic workers' rights, however, progress toward the development of migrant rights has been slow or nonexistent.<sup>190</sup> The United Nations has sponsored a convention on protecting the rights of migrant workers—the United Nations Convention on Migrant Rights.<sup>191</sup> As with many of the Gulf region states, the UAE has struggled to develop its labor laws and to align them with principled, well-established international labor standards, specifically for migrant workers.<sup>192</sup> The country has not declared that it would eliminate the *kafala* system as Qatar and Bahrain have done, but it has initiated steps to allow some workers to change their employers after six months with the consent of their current employer.<sup>193</sup> The UAE labor laws have also limited working hours to forty-eight hours per week, permitting

188. *Id.*

189. On May 31, 2017, the Federal National Council revised a draft of its domestic workers law inspired by the International Labour Organization's Domestic Workers Convention, which was approved by the cabinet in March. See *UAE: Domestic Workers Rights Bill A Step Forward (Enforcement Mechanisms Needed)*, Human Rights Watch, (Jun. 17, 2017), <https://www.hrw.org/news/2017/06/07/uae-domestic-workers-rights-bill-step-forward>. The issues address domestic workers' conditions of employment and recruitment. *Id.* Once this bill is ratified by President Sheikh Khalifa bin Zayed Al Nahyan, it will become law in the United Arab Emirates. *Id.* Domestic workers were largely excluded from the labor law process, but nongovernmental pressure has recently put pressure on the government to implement these progressive changes. *Id.* The new proposed law calls for workers to be treated "in a good manner that preserves their dignity and integrity of their body," while also requiring that domestic workers are provided with food and accommodation. *Id.* Additionally, this new law would require recruitment agencies to halt discriminatory practices based on race, color, sex, religion, political opinion, national or social origin. *Id.*

190. *Migration in the Gulf: 2016 in Review*, MIGRANT RTS. (Jan. 1, 2017), <https://www.migrant-rights.org/2017/01/migration-in-the-gulf-2016-in-review/>.

191. UNESCO, UNITED NATIONS CONVENTION ON MIGRANT RIGHTS (2003), available at <http://unesdoc.unesco.org/images/0014/001435/143557e.pdf>.

192. *Id.*

193. *Migration in the Gulf: 2016 in Review*, *supra* note 190.

up to eight hours of work per day, but exceptions for hospitality sector jobs allow those employers to require their employees to work longer hours.<sup>194</sup>

The outrage and impact of migrant labor abuse is felt not only by migrants themselves, but also by the international community, which is familiar with the comparatively more protective labor laws of Western nations.<sup>195</sup> Outside trade unions and artists from the West are outraged at the conditions of construction workers who are building a \$17 billion USD cultural hub on Saadiyat Island in Abu Dhabi.<sup>196</sup> Restrictions on these workers include: segregation, a 10:00 p.m. curfew, monitoring by security guards, and the inability to move around unless the transportation is on authorized buses.<sup>197</sup> If workers return to their camp after 10:00 p.m., they are locked out overnight.<sup>198</sup> Coerced by recruitment agencies into paying excessive fees, migrant workers fall into serious debt, only to be sent to camps with unlivable conditions for disproportionately underpaid work.<sup>199</sup>

In a 2017 economic study by the research agency, Economic Freedom of the World, the UAE placed thirty-seventh out of 159 countries based on factors that are said to determine economic freedom.<sup>200</sup> The factors used to determine the rankings included:

194. *Id.*

195. David Batty, *Migrants Building UAE Cultural Hub 'Working in Prison Conditions'*, GUARDIAN (Apr. 4, 2015), <https://www.theguardian.com/global-development/2015/apr/04/migrant-workers-uae-saadiyat-island-abu-dhabi-battery-hens>.

196. The Saadiyat Accommodation Village is a designated area comprised as living quarters for the migrant workers constructing the major project on the Saadiyat island. Located off the coast of Abu Dhabi, Saadiyat island is a man-made structure offering rental and properties for sale and various other amenities where visitors can shop, dine and engage in recreational activities. Batty, *supra* note 195. *See also Home*, SAADIYAT, <http://www.saadiyat.ae/> (last visited Oct. 7, 2018).

197. *Id.*

198. *Id.*

199. *Id.*

200. Believing that economic freedom is a driving force for prosperity, the Fraser Institute's Economic Freedom of the World Annual study attempts to use variables to determining how countries support economic freedom. The Fraser Institute looks at five areas: (1) size of government, (2) legal system and property rights, (3) sound money, (4) freedom to trade internationally and (5) regulation. Jasim Ali, *GCC Economies Have Not Got a Fair Deal*, GULF NEWS (Oct. 14, 2017), <https://gulfnews.com/business/analysis/gcc-economies-have-not-got-a-fair-deal-1.2105352>.

“[a] legal system and property rights with regards to impartiality of the judicial system as well as enforcement of contracts” and the “regulation of credit market, labour concerning hiring practices and minimum wage and business such as bureaucracy.”<sup>201</sup> By comparison, the same study gave low rankings to most other Gulf countries, such as Kuwait, Oman, and Saudi Arabia.<sup>202</sup>

Furthermore, in 2017, Sri Lanka’s Deputy Minister of Foreign Employment, Manusha Nanatakkara, spoke at Abu Dhabi Dialogue’s (ADD) global meeting with international dignitaries in Geneva to work on a state-led regional consultation that would encourage the regulation of labor migration practices in the UAE.<sup>203</sup> The suggested program implements a variety of suggestions on how to improve labor practices in the UAE, including:

creating an alternative model of labour recruitment, aimed at strengthening government oversight over the recruitment process to promote fair recruitment among Abu Dhabi Dialogue countries and reduce recruitment costs; certification and mutual recognition of skills enabling the migrant workers to advance in their careers; comprehensive information and recognition programme (CIOP) aimed at creating better awareness prior to departure; and the use of technology in governance of labour migration.<sup>204</sup>

In summation, parties have worked to establish a plausible solution to migrant workers’ employment issues. Many organizations with similar missions to the ADD are in favor of establishing uniform practices that promote added protections for the vulnerable migrant population.

### *B. Solutions to Enforcement and Further Development of Labor Law in the UAE*

Since migrant workers are still citizens of their home countries, the home countries have a particular obligation to protect

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201. *Id.*

202. Bahrain ranked 49<sup>th</sup>, followed by Kuwait and Oman at 97<sup>th</sup>, and Saudi Arabia at 122<sup>nd</sup>. *Id.*

203. *Deputy Minister Manusha Nanatakkara Participates in the Seventh Global Meeting on Migration in Geneva*, ASIAN TRIBUNE (Oct. 14, 2017), <http://www.asiantribune.com/node/91101>.

204. The ADD is an international organization focusing on temporary migration in the UAE. Its goal is to develop and strengthen a uniform system of labor practices throughout the country. *Id.* See also *Abu Dhabi Dialogue*, INT’L ORG. MIGRATION, <https://www.iom.int/abu-dhabi-dialogue> (last visited Dec. 3, 2018).

their citizens overseas from predatory behaviors that cause harm. Workers in the UAE remit large sums of money back to their home countries,<sup>205</sup> and this can help to incentivize governments that benefit from the migration of their citizens to continue to improve worker conditions. The Philippines has taken some steps to curb migrant worker abuse, as it recently signed a memorandum of understanding (MoU) asking for the foreign countries' full cooperation during the Overseas Filipino Workers employment cycle.<sup>206</sup> The reason for this MoU implementation is to assist workers and employers in complying with employment contracts.<sup>207</sup> The MoU also requires that Filipinos who migrate to the UAE for work are "briefed of the laws, policies, norms and culture of the destination country."<sup>208</sup>

Another proposed solution would be the enforcement and implementation of the Wages Protection System (WPS),<sup>209</sup> which would allow an employer to pay salaries electronically, and therefore, directly to the employee's bank or financial institution.<sup>210</sup> This system was specifically created to allow the UAE government and administrative agencies to monitor the wages paid to employees by private employers.<sup>211</sup> Created in 2009, the WPS has assisted 3.5 million foreign workers.<sup>212</sup> The electronic

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205. See *How much remittances all UAE expats sent in 2017*, KHALEEJ TIMES, (Mar. 12, 2018), <https://www.khaleejtimes.com/-How-much-remittances-all-UAE-expats-sent-in-2017>.

206. Overseas Filipino Workers is a term coined for Filipino nationals who accept work outside of the country. The Philippines often tracks the number of Filipino nationals who are abroad as a result of work opportunities. See Jeffery Hayes, *Overseas Filipino Workers*, FACTS & DETAILS, [http://factsanddetails.com/southeast-asia/Philippines/sub5\\_6g/entry-3918.html#chapter-3](http://factsanddetails.com/southeast-asia/Philippines/sub5_6g/entry-3918.html#chapter-3) (last updated June 2015). See also William Depasupil, *Manila, Abu Dhabi Ink Pact in OFW Protection*, MANILA TIMES (Sept. 29, 2017), <https://www.manilatimes.net/manila-abu-dhabi-ink-pact-ofw-protection/353570/>.

207. *Manila, Abu Dhabi Ink Pact in OFW Protection*, *supra* note 206.

208. *Id.*

209. The Wage Protection System in the UAE was highlighted by the International Labour Organization and developed by the Central Bank of the UAE as an electronic salary transfer system, which would allow employers to approve and authorize banking institutions to pay workers. See *Wages Protection System (UAE)*, INT'L LAB. ORG. (July 18, 2016), [http://www.ilo.org/dyn/migpractice/migmain.showPractice?p\\_lang=en&p\\_practice\\_id=186](http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=186). The system allows for the Ministry of Labor to have access to the private sector employers who are paying wages to their workers in order to track compliance. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

WPS requires that every employee “must be paid at least once every two weeks unless otherwise specified in employment contract.”<sup>213</sup> Those employers who fail to enroll in the WPS service, which is registered with the Ministry of Labour, are in jeopardy of having their work permits denied until all outstanding payments are addressed.<sup>214</sup> These guidelines also apply to employers who delay payment for longer than one month from the original due date.<sup>215</sup> The WPS objectives are:

reiterating the commitment to protect workers’ wages; providing innovative solutions that help employers safeguard their own interests and reduce the time of effort needed to pay workers’ wages and offer employers a clear track record of salary payment which enables them to demonstrate compliance with the labour law and safeguard their interests in case of labour disputes; taking serious steps to improve job security in order to strengthen work relationships in the UAE and safeguard the rights of all parties concerned; entrenching transparency and competitiveness; ensuring that the UAE Ministry of Labour is regularly and constantly updated on wages data in private sector in order to guarantee that employers fulfill their salary obligations; and taking protective and proactive measures to reduce labour disputes pertaining to wages.<sup>216</sup>

The WPS system helps to fulfill the collective objectives of the private sector in avoiding fines and other penalties and to alleviate the international community’s concerns by safeguarding the rights of migrant workers in foreign countries.

One further way to combat some of the egregious human rights violations as they relate to labor law standards is to focus on awareness and education. Recently, the Employment Law Alliance<sup>217</sup> held its annual conference in Shanghai with employment and immigration lawyers from over 120 countries to create the *Global Employer Handbook*, which summarizes employment laws across the world.<sup>218</sup> This document should be used to

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213. *United Arab Emirates Labour and Employment Law*, *supra* note 163.

214. *See Wages Protection System (UAE)*, *supra* note 209.

215. *Id.*

216. *Id.*

217. The Employment Law Alliance is an international network of attorneys who provide legal expertise and commentary on issues related to labor and employment law. *See Home*, EMP. L. ALLIANCE, <https://www.ela.law/> (last visited Dec. 3, 2018).

218. *See* Emma Higham & Ben Brown, *Considerations for International Employers*, MONDAQ (Nov. 1, 2017),

educate both employers and employees about their respective countries' particular labor laws and to serve as a guide to assist them in compliance.<sup>219</sup> Ideally, the UAE and an employee's home country should have the onus of informing migrant workers, who are often less educated, of their rights.

## CONCLUSION

Migrant workers in the UAE and other Gulf countries are vulnerable to exploitation due to the exponential growth of regions such as Dubai and Abu Dhabi, which causes a ripple effect on imported labor. The resulting need for cheap, robust, and unskilled labor readily morphs into the mistreatment of a group of people, creating a class divide that is almost instantaneously felt. In consideration of the urgent need for reform, the international legal community has an obligation, as stipulated in the Universal Declaration of Human Rights, to ensure that the most vulnerable workers are not subject to inhumane standards of employment.

The adoption of the Domestic Workers Convention<sup>220</sup> has had a limited effect. There must also be a forthcoming commitment to enforce the UDHR, as well as an effort to ensure compliance. State actors should be encouraged to negotiate bilateral agreements and to push for substantial uniformity in the way that migrant workers are treated. Furthermore, in acknowledging the unfair and unlawful treatment to which these migrant workers are subjected, there must be a recognition that in the process of creating this class rift, an ethnic and racial division between the southeast Asian migrants and the Western-born expatriates is a byproduct. In order to combat any of these underlying social and political issues, the international community must also confront the UAE and incentivize it to focus on the economic benefits of protecting the migrant working class.

It is also the responsibility of the international community to continue to implement enforcement mechanisms that hold Emirati employers accountable for their violations of

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<http://www.mondaq.com/uk/x/642014/employee+rights+labour+relations/Considerations+For+International+Employers>.

219. *Id.*

220. *100th ILO Annual Conference Decides to Bring an Estimated 53 to 100 Million Domestic Workers Worldwide Under the Realm of Labour Standards*, *supra* note 181.

international human rights law.<sup>221</sup> Since the UAE has experienced an exorbitant amount of growth within a short time, the country's leaders are still dealing with how to combat the influx of migrant workers and gradually learning how to strengthen protections for this vulnerable segment of the population. Therefore, the United Arab Emirates has an opportunity to engage with the international community in the development of its labor laws, implementing suggestions from the Universal Declaration of Human Rights. The country's leadership, including the Ministry of Labor, should seek out solutions to migrants' abuse, acknowledging the tremendous role many laborers play in making the UAE a successful tourist hub.

The paradigm must shift from constant praise for a place deemed a paradise for the rich to actively working to maintain rights and further legal remedies for the poorest of the poor.

*Janae C. Cummings\**

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221. G.A. Res. 217 (III) A, *supra* note 59; Cairo Declaration of Human Rights, *supra* note 59; *see also* International Convention on the Elimination of All Forms of Discrimination, *supra* note 55; *see also* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, *supra* note 59; G.A. Res. 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (Dec.18 1990), available at <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>.

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